Supreme Court, U.S.
FILED
01 514 JUL 25 2001
OFFICE OF THE CLERK

No. _____

IN THE

Supreme Court of the United States

TAHIR S. RAZVI,
Petitioner

v.

GUARANTEE LIFE INSURANCE COMPANY

On Petition for Writ of Certiorari to the U.S. Court of Appeals for the Fifth Circuit Cause No. 00-20839

PETITION FOR WRIT OF CERTIORARI

ALDEN D. HOLFORD
Counsel of Record
7515 Kensico Road
Houston, Texas 77036
(713) 772 0977

QUESTION PRESENTED FOR REVIEW

Whether the Fifth Circuit Court of Appeals erroneously affirmed the District Court's granting of summary judgment for Appellee Guarantee Life Insurance Company.

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STATEMENT OF JURISDICTION

(i) The Fifth Circuit Court of Appeals entered its Judgment on May 10, 2001.

(ii) None

(iii) Not applicable

(iv) This Honorable Court has jurisdiction of this Petition under 28 U.S.C. §1254 (1)

(v) Not applicable

AUTHORITIES APPLICABLE

"The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories,and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law."

Fed. R. Civ. Proc. 56(c), Third Sentence.

"(a) Persons empowered to bring a civil action

A civil action may be brought-

(1) by a participant or beneficiary

(B) to recover benefits due him under the terms of his plan ..."

Employee Retirement Income Security Act 29 U.S.C. §1132(a)(1)(B)

STATEMENT OF THE CASE

On June 18, 1999, Tahir Razvi's boss, knowing how sick he was, required him to go on vacation until August 6, 1999, when he was to be and was laid off (CR #10, para.2, 3). On June 30, 1999, while onrequired vacation, he was declared totally disabled by his doctor (Appendix, Document Five). See also the Payroll Authorization Record, which states "Effective date 8-6-99" for the "Reduction of Force" (Appendix, Document Six). Tahir Razvi applied for Long Term Disability on July 1, 1999 (Appendix, Document Seven).

The basis of Jurisdiction for the District Court was 28 U.S.C. §1331.

ARGUMENT

The Fifth Circuit Court of Appeals stated as grounds for its Judgment that "... and affirm for essentially the same reasons stated by the district court." (Appendix, first document, page 2). The District Judge's Memorandum and Order is at Appendix, second document, and its Judgment is at Appendix, third document.

The District Court erroneously sustained (Appendix, second document, pages 5-6) Guarantee Life's Objections(C.R. #28) to Plaintiff's Affidavit (C.R. #22), and its Objections (C.R. #45) to Plaintiff's Third Affidavit (C.R. #40). Plaintiff's replies to Guarantee Life's objections are at C.R. ## 34, 48, except that Petitioner believes that the District Court was correct that S&B's employees' statements were not party-opponent admissions as to Guarantee Life, but Petitioner still submits that the sustained objections should be reversed. Petitioner adds (to C.R. #48) that Fed. R. Civ. E. 804(a)(5),(b)(3) excepts Mr. Haden's statement to Petitioner, related in Petitioner's Third Affidavit (CR #40), paragraph 3, "Not you," (as to his benefits terminating on June 19, 1999), and Petitioner's statements (dealt with in C.R. #40) that he

personally heard the statements he recites. And Petitioner's statement that it was Ms. Lunday's writing on the Long Term Disability Form when she handed it to Petitioner, in paragraph 4, was permitted under Fed. R. Civ. E. 701. The District Court erroneously affirmed Appellee's determination that Petitioner's employment with S&B ended on June 18, 1999. The District Court misconstrued the Payroll Authorization Record (Appendix, Document Six) and the Notice of COBRA Eligibility (Appendix, Document Eight) (not objected to, C.R. #45), and misapplied the Exit Interview Form (Appendix, Document Nine) ("last day worked," not last day of employment.) Petitioner urges this Court to analyze these documents. And in Petitioner's Third Affidavit, C.R.#40, Petitioner states that he personally heard the statements "On June 18, my boss ... instructed me to take vacation until August 6, 1999 when I was to be, and was, laid off.", and Mr. Haden's statement to him, "Not you," (as to his benefits terminating on June 19, 1999), and Mr. Thompson's statement to him that "your payroll check stubs would be legal documents showing that you are still on the S&B payroll until August 6, 1999"

(Petitioner's pay stubs while he was on vacation until August 6,1999, are at C.R. #22, Exhibit B, starting at page 188), and Ms. Dobbi Lunday's statement, after Tahir Razvi's June 30, 1999 determination of total and permanent disability, that he "was still on the S&B payroll." The District Court misapplied the definition of "Actively at Work" to Petitioner's situation of being declared totally and permanently disabled while on required vacation. Defendant Guarantee Life's Response to Plaintiff's Motion for Summary Judgment (C.R. # 30), Exhibit A (pp. 353-327), is Guarantee Life's Certificate of Group Insurance. The definition for "Actively at Work" is at page 3, the first definition:

> ACTIVE WORK or ACTIVELY AT WORK means an Employee's full-time performance of all customary duties of such Employee's occupation at:
>
> 1. the Employer's usual place of business or
> 2. Any other business location to which the Employer requires the Employee to travel.

The District Court, based on this definition, decided that Tahir Razvi was not "Actively at Work" when he was and, while vacation, declared totally and permanently disabled. (C.R. #49,

pages 8-9). However, it is required of the District Judge, that when the contract has been drafted totally by one party, to construe "most strongly" any ambiguities in the relevant contractual language against that party. United States v. Seckinger, 397 U.S.203, 210-211, (1970). Petitioner respectfully points out, that the proper construction of the "Actively at Work" definition depends on whether the District Judge construes "all customary duties of such Employee's occupation" to mean his occupation when he was working, or to mean his occupation at the time he was declared totally and permanently disabled, and "any other business location to which the Employer requires the Employee to travel" is limited to locations where the Employee is actually working, or includes any location where the Employer requires the Employee to travel, where for the Employer's business, that place is the usual place where the Employee goes at the requirement of the Employer. In each case, Petitioner respectfully submits, either construction of the language fits the definition of "Actively at Work," so the constructions favoring Petitioner, the latter ones, should have been the ones the District Judge

employed in her decision. The District Judge must also employ for her decision all facts put in evidence by Petitioner that are uncontradicted by Appellee's or the other Defendant's evidence. Petitioner pled, Appendix, Document Four, and put in unobjected-to affidavit (CR# 22), that he was required by his boss to go on vacation, and that while on vacation he didn't do any work, he only rested, that was "all customary duties" of an Employee while on vacation. There is, therefore, "evidence on which the jury could reasonably find for the plaintiff." Appendix, second document, page 4. "B. Summary Judgment Standard".

PRAYER

WHEREFORE, Petitioner prays that this Honorable Court will grant Petitioner's Petition for Writ of Certiorari.

Respectfully Submitted,

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Supreme Court, U.S.
FILED

No. 01 514 JUL 25 2001

OFFICE OF THE CLERK

IN THE

Supreme Court of the United States

TAHIR S. RAZVI,
Petitioner

v.

GUARANTEE LIFE INSURANCE COMPANY

On Petition for Writ of Certiorari to the
U.S. Court of Appeals for the Fifth Circuit
Cause No. 00-20839

PETITIONER'S APPENDIX

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UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

U.S. COURT OF APPEALS
FILED
MAY 10, 2001
CHARLES L. FULBRUGE III
CLERK

No. 00-20839

TAHIR S. RAZVI

Plaintiff - Appellant,

versus

GUARANTEE LIFE INSURANCE COMPANY; S&B ENGINEERS AND CONSTRUCTORS, LTD.,

Defendants

GUARANTEE LIFE INSURANCE COMPANY,

Defendant - Appellee

Appeal from the United States District Court
for the Southern District of Texas
Civil Docket #H - 00 - CV -521

Before JONES, DeMOSS, and BENAVIDES,
Circuit Judges

PER CURIAM:*

The court has considered appellant's position in light of the briefs and pertinent portions of the record. Having done so,

* Pursuant to 5th Cir. R. 47.5, the Court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5th Cir. R. 47.5.4.

we find no reversible error of fact or law and affirm for essentially the reasons stated by the district court.

AFFIRMED

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

TAHIR S. RAZVI, Plaintiff,	§	
v.	§	
	§	CIVIL ACTION
	§	NO.H-00-0521
GUARANTEE LIFE INSURANCE COMPANY and S&B ENGINEERS AND CONSTRUCTORS, LTD., Defendants	§	

MEMORANDUM AND ORDER

This case, filed pursuant to the Employee Retirement Income Security Act ("ERISA"), is before the Court on the Motion for Summary Judgment ("Plaintiff's Motion") [Doc. #21] filed by Plaintiff Tahir S. Razvi [Doc. #21], the Motion for Summary Judgment [Doc. #32] filed by Defendant Guarantee

[1] 29 U.S.C. §1001 *et seq*

Life Insurance Company ("Guarantee"), and the Motion for Summary Judgment [Doc. # 33] filed by Defendant S&B Engineers and Constructors, Ltd. ("S&B"). The Court has carefully reviewed the full record in this case. Based on this review, and the application of governing legal authorities, the Court denies Plaintiff's Motion and grants Defendants' Motions.

1. FACTUAL AND PROCEDURAL BACKGROUND

The factual background of this case is largely undisputed. Plaintiff was hired by S&B as an engineer in August 1995. Guarantee sold a Group Long Term Disability Insurance Policy (the "Policy") to S&B as an employee benefit for eligible S&B employees. The Policy provided long term disability benefits to S&B employees who became disabled during their employment with S&B and who were "actively at work" at the time of the disability determination. The Policy defines "actively at work" as "full time performance of all customary duties of such Employee's occupation .." See Policy, Exhibit A to Guarantee's Response to Plaintiff's Motion [Doc. #30], at 3.

Guarantee processed claims for benefits submitted by

S&B's employees. It is undisputed that Guarantee, not S&B, made decisions regarding entitlement to benefits under the Policy.

Prior to June 18, 1999, S&B informed Plaintiff that his position would be eliminated in an impending reduction in force. Plaintiff worked until June 18, 1999, and he received his final paycheck on August 6, 1999. This final paycheck included payment for vacation time. It is undisputed that Plaintiff performed no engineering work for S&B after June 18, 1999. Plaintiff alleges that he was determined by his physician to be totally and permanently disabled on June 30, 1999.

Plaintiff filed a claim for benefits under the policy, which was denied by Guarantee. As a basis for its decision, Guarantee found that Plaintiff was not "actively at work" at the time the disability determination was made by Plaintiff's physician. It is Guarantee's position that Plaintiff's employment was terminated on June 18, 1999, as part of a reduction in force. Even if plaintiff's employment were deemed to continue through August 6, 1999, Guarantee maintains that Plaintiff was not "actively at work" because he had been advised of his termination and was

using accrued vacation time which does not satisfy the Policy's definition of "actively at work."

Plaintiff filed this lawsuit against Guarantee and S&B in state court pursuant to 29 U.S.C. §1132(a)(1)(B) to recover the long term disability benefits he alleges are due him under the Policy. On February 17, 2000, Defendants removed the case to this Court. On May 2, 2000, Plaintiff filed an Amended Complaint [Doc. #19]. All parties moved for summary judgment, and the motions are now ripe for decision.

II. APPLICABLE LEGAL STANDARDS

A. Standard of Review of ERISA Benefits Decision

The United States Supreme Court has held that the denial of benefits under an ERISA plan is "reviewed under a *de novo* standard unless the benefit plan gives the administrator or fiduciary discretionary authority to determine eligibility for benefits or to construe the terms of the plan." *Firestone Tire & Rubber Co.* v. *Bruch*, 489 U.S. 101, 115 (1989). See also *Vega v.National Life Insurance Services, Inc.*, 188 F.3d 287, 295 (5th Cir. 1999) (*en*

[2] Section 1132(a)(1)(B) permits a civil action to be brought by an ERISA plan participant "to recover benefits due him under the terms of his plan, to enforce his rights under the terms of the plan, or to clarify his rights to future benefits under the terms of the plan." 29 U.S.C. §1132(a)(1)(B).

banc); *Meditrust Finacial Services Corp. v. The Sterling Chemicals, Inc.*, 168 F.3d 211, 213 (5th Cir. 1999). If the plan grants to the administrator such discretionary authority, the reviewing court applies an "abuse of discretion" standard. *Id.*

In this case, the Court has carefully reviewed the Policy and concludes that it does not grant to Guarantee discretionary authority to determine eligibility for benefits or to construe the terms of the Policy. The terms of the Policy are clearly defined and there is no language granting Guarantee discretionary authority to construe the terms of the Policy other than in compliance with the definitions therein. The Policy provides that "[w]hen [Guarantee] receives proof of claim, benefits payable under the Policy will be paid monthly during any period for which [Guarantee] is liable." Policy, at 8. The Policy sets forth precisely what is required for the proof of claim, without giving Guarantee discretionary authority to require more or to accept less. I*d., cf. Guarino v. Metropolitan Life Insurance Co.*, 915 F. Supp. 435, 464 (D. Mass. 1995) (finding discretionary authority from policy requirement that all "proof of claim must be satisfactory to the Insurance Company").

Absent discretionary authority in the Policy for Guarantee to determine eligibility for benefits or to construe the terms thereof, Guarantee's decision to deny Plaintiff's claim for long term disability benefits is reviewed de novo. As a result the Court must "review the claim as it would ... any other contract claim - by looking to the terms of the plan and other manifestations of the parties' intent." Estate of Bratton v. National Union Fire InsuranceCo., 215 F.3d 516, 522 (5th Cir. 2000) (internalQuotations omitted). With reference to the decision maker's factual findings, however, the federal courts owe deference to those findings and apply an abuse of discretion standard of error. Id.

B. Summary Judgment Standard

The United States Supreme Court has held that a motion for summary judgment is properly granted unless there is evidence "on which the jury could reasonably find for the plaintiff. The judge's inquiry, therefore, unavoidably asks whether reasonable jurors could find by a preponderance of the evidence that the plaintiff is entitled to a verdict ..." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 252 (1986); *Wheeler v. Miller,* 168 F.3d 241,

247 (5th Cir. 1999). Rule 56 is an integral part of the Federal Rules of Civil Procedure, recognizing a party's right to demonstrate that certain claims have no factual or legal basis and to have those unsuppoted claims disposed of prior to trial. *Celotex Corp. v.Catrett*, 477 U.S. 317 (1986).

Once the movant shows that that there is no genuine issue of material fact, the burden is on the nonmovant to demonstrate with "significant probative evidence" that there is an issue of material factwarranting a trial. *Texas Maufactured Housing Ass'n v. Nederland*, 101 F.3d 1095, 1099 (5th Cir. 1999), cert. Denied 521 U.S. 1112 (1997). The nonmovant's burden cannot be satisfied by conclusory allegations, unsubstantiated assertions, metaphysical doubt as to the facts, or a scintilla of evidence. *Doe v. Dallas Independent School Dist.,* 153 F.3d 211, 215 (5th Cir. 1998); *Little v. Liquid Air Corp.*, 37 F.3d 1069, 1075 (5th Cir. 1994) *(en banc)*.

"Material that is inadmissible will not be considered on a motion for summary judgmentbecause it would not establish an issue of material fact if offered at trial and continuing the action would be useless." *Duplantis v. Shell Offshore, Inc.*, 948 F. 2d

187,192 (5th Cir. 1991). Rumors, speculation, hearsay and other information which would be excluded at trial cannot be considered in ruling on a motion for summary judgment. *Fowler v. Smith*, 68 F.3d 124, 126 (5th Cir. 1995).

III. Analysis

A. Objections to Plaintiff's Affidavits

Guarantee has filed objections to statements contained in Plaintiff's affidavits. Specifically, Guarantee objects to paragraph 4 of Plaintiff's Third Affidavit as not within Plaintiff's personal knowledge and objects to paragraphs 2 and 3 and the exhibits to Plaintiff's Affidavit, as well as paragraphs 3, 5, and 6 of Plaintiff's Third Affidavit as hearsay. The Court concludes that Guarantee's objections are well-taken and are sustained.

With reference to the hearsay objections, Rule 301 of the Federal Rules of Evidence defines hearsay as "a statement other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." Plaintiff's argument that the statements are not hearsay because he heard them is without merit. Plaintiff's argument that

statements made by S&B's employees are admissions by a party-opponent under Federal Rule of Evidence 801(d)(2) as to Guarantee is unsupported by the undisputed evidence. See Policy, Exhibit A to Guarantee's Response to Plaintiff's Motion, at 8 ("Under no circumstances will the Policyholder or Employer be deemed the agent of the Company.").

Having sustained Guarantee's objections, the challenged statements are not considered by the Court in deciding the pending motions for summary judgment.

B. Claim Against S&B

S&B was Plaintiff's employer. S&B purchased the Policy from Guarantee as a benefit for S&B's employees. It is undisputed that S&B had no authority to make benefit determinations under the Policy or to construe the Policy's terms. Indeed, Guarantee had no obligation under the Policy to seek S&B's advice regarding benefit determinations, and S&B had no right under the Policy to provide such advice.

Plaintiff cites no authority to support his cause of action under §1132(a)(1)(B) against his employer. The only argument that Plaintiff presents is an unsupported statement that "the Court

stated at the April 21, 2000, Scheduling Conference, that S&B was a proper party if S&B employed the Plan Administrator." *See* Plaintiff's Response to S&B's Motion for Summary Judgment [Doc. #37], at 2.

Initially, the Court does not recall making the referenced statement and does not hold that an employer is a proper party under §1132(a)(1)(B) merely because the employer hired the Plan Administrator. Additionally, Plaintiff has not identified the Plan Administrator for S&B's ERISA Plan. The United States Court of Appeals for the Fifth Circuit has held that an insurer is "in effect" the plan administrator when, as here, claimants are required to file written notices of claims and the proof of loss with the insurer, the insurer provides the proof of loss forms, the insurer has the right to require the claimant to submit to physical examinations, and the insurer has the exclusive right to make benefit determinations. See *Bratton*, 215 F.3d at 522 n.7. Although the *Bratton* decision was issued on June 20, 2000, and Plaintiff filed his "Reply to S&B's Response to Plaintiff's Motion for Summary Judgment" [Doc. #35] on July 12, 2000, and filed his "Reply to S&B's Motion for Summary Judgment" [Doc. #37] on July19,

2000, Plaintiff does not cite *Bratton* for the proposition that Guarantee is the administrator of S&B's ERISA plan.[3]

Moreover, if Plaintiff intended to assert a separate claim against S&B as a fiduciary under the Plan, "because §1132(a)(1)(B) affords [Plaintiff] an avenue for legal redress, [he] may not simultaneously maintain [a] claim for breach of fiduciary duty." See *Rhorer v. Raytheon Engineers and Constructors, Inc.*, 181 F.3d 634, 639 (5th Cir. 1999).

The Court concludes that S&B, as an employer without decision-making authority under the Policy, is not a proper defendant in Plaintiff's §1132(a)(1)(B)claim. Accordingly, the Court grants S&B's Motion for Summary Judgment.

C. Claim Against Guarantee

Guarantee denied Plaintiff's claim for long term disability benefits under the Policy based on (1) Guarantee's finding that Plaintiff's employment terminated on June 18, 1999, rather than on August 6, 1999, and (2) Guarantee's determination that Plaintiff did not satisfy the "actively at work" requirement as that term is defined in the Policy.

[3] The Court notes with some concern that Plaintiff filed five pleadings in connection with the summary judgment motions and does not cite any case law to support his arguments.

With reference to whether Plaintiff's employment terminated on June 18, 1999, or on August 6, 1999, all parties presented evidence to support their positions on this issue. Plaintiff relies on a Payroll Authorization Record indicating August 6, 1999 as its effective date and a "Notice of COBRA Eligibility" dated August 6, 1999. Defendant relies on an Exit Interview Form indicating June 18, 1999, as the "last day worked" and the undisputed fact that Plaintiff no longer performed any engineering duties after June 18, 1999. The evidence regarding this issue is conflicting and would support a finding that Plaintiff's employment ended on either date. The Court concludes, therefore, that Guarantee's *factual* determination that Plaintiff's employment ended on June 18, 1999 survives the "abuse of discretion" standard of review set forth in *Bratton.*

The clearer issue for purposes of Plaintiff's §1132(a)(1)(B) claim against Guarantee is whether Plaintiff, at the time of the disability determination, was "actively at work" as that term is defined in the Policy. As noted above, the Policy defines "actively at work" as "an Employees full-time performance of all customary duties of such Employee's occupation ..."

Policy at 3. It is undisputed that Plaintiff was an engineer for S&B. Consequently, it is beyond dispute that his customary duties included performing engineering services. Plaintiff concedes that he did not perform engineering services for S&B after June 18,1999. See Razvi Deposition, at 26-27.

Plaintiff argues that he was on vacation between June 18, 1999, and August 6, 1999. Plaintiff asserts, without either evidentiary or legal support, that taking vacation was one of his customary duties. While he was on vacation, Plaintiff argues, his *only* customary duties were "rest and relaxation." *See* Plaintiff's Response to S&B's Motion for Summary Judgment, at 1. Therefore, according to Plaintiff's argument, he was engaged in the full-time performance of all customary duties of his occupation while he was on vacation between June 18, 1999 and August 6, 1999.

Plaintiff cites no legal authority to support his argument, and this Court's independent has revealed none. Indeed, this Court holds that such an interpretation of the term "actively at work" as defined by the Policy is nonsensical. The Court rejects the argument that Plaintiff was performing on a full-time basis all

customary duties of his occupation as an engineer while he was on vacation.

Guarantee's benefits determination, reviewed by this Court with due deference to factual findings made by Guarantee, was correct in light of the evidence in the record. The Court grants Guarantee's Motion for Summary Judgment.

IV. CONCLUSION AND ORDER

Based on the foregoing, the Court concludes that S&B is not a proper defendant and is entitled to summary judgment. The Court also concludes that Plaintiff was not "actively at work" as that term is defined in the Policy, after June 18, 1999. Guarantee properly denied Plaintiff's claim for disability benefits under the Policy, and it is hereby

ORDERED that Plaintiff's Motion for Summary Judgment [Doc. #21] is DENIED and Defendants' Motions for Summary Judgment [Doc. #32 and Doc. #33] are GRANTED. The Court will issue a separate final judgment.

SIGNED at Houston, Texas this 22nd day of August, 2000.

/s/ Nancy F. Atlas

Nancy F. Atlas
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

TAHIR S. RAZVI, Plaintiff,	§	United States Courts Southern District of Texas FILED Aug 23, 2000 Michael N. Milby, Clerk of Court
v.	§	CIVIL ACTION NO. H-00-0521
GUARANTEE LIFE INSURANCE COMPANY and S&B ENGINEERS AND CONSTRUCTORS, LTD., Defendants	§	

FINAL JUDGEMENT

In accordance with the Memorandum and Order issued this day, it is hereby

ORDERED that Plaintiff's Motion for Summary Judgment [Doc. #21] is DENIED and Defendants' Motions for Summary Judgment [Doc. #32 and Doc. #33] are GRANTED. It is further ORDERED that taxable costs are assessed against Plaintiff Tahir S. Razvi.

THIS IS A FINAL JUDGMENT.

SIGNED at Houston, Texas this 22nd day of August, 2000.

/s/ Nancy F. Atlas

Nancy F. Atlas
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

TAHIR S. RAZVI,	§	United States Courts Southern District of Texas
Plaintiff,	§	FILED
	§	Aug 23, 2000
	§	Michael N. Milby, Clerk
v.	§	of Court
	§	CIVIL ACTION NO.
	§	H-00-0521
	§	
	§	
GUARANTEE LIFE	§	
INSURANCE COMPANY and	§	
S&B ENGINEERS AND	§	
CONSTRUCTORS, LTD.,	§	
Defendants	§	

PLAINTIFF"S FIRST AMENDED PETITION

1. Plaintiff Tahir Razvi resides at 4815 Hillswick Drive, Sugarland, Fort Bend County, Texas.

2. Defendant Guarantee Life Company has an office at 1155 Dairy Ashford, Houston, Harris County, Texas. Guarantee Life Insurance Company is the long-term disability benefits insurer for S&B Engineers and Constructors under the policy attached as Exhibit A. Defendant S&B Engineers and

Constructors, Ltd.has an office at 7825 Park Place Blvd. Houston, Harris County, Texas and employs the Administrator under the policy. Both Defendants have answered.

3. Tahir Razvi Worked for S&B as an engineer long enough for long-term disability benefits, when on June 18, 1999, his boss instructed him to take vacation until August 6, 1999, when he was to be, and was, laid off. He was declared permanently disabled culminating on a June 30 visit to a doctor. Mr. Razvi, born in 1939, and had an onset of diabetes in 1987, and onset of glaucoma in 1987. He had a heart attack in 1989, which left him working tired and with lots of stress. He had a stroke in 1990, and 90% kidney failure in May of 1998, in response to which he changed his diet to vegan and lost weight. He has not yet had dialysis. These severe illnesses caused the doctor on June 30, 1999 to declare Mr. Razvi totally and permanently disabled (doctor's report attached as Exhibit B)

4. The Payroll Authorization Record attached as Exhibit C states "Effective Date 8-6-99" for the "Reduction of Force" and

Tahir Razvi was laid off when his vacation ended on 8-6-99.

5. Exhibit A, page 2, states as a requirement for the Eligible Class for Benefits that the employee be "actively at work." Being on required paid vacation and having Long Term Disability Insurance deductions taken from each check is "actively at work" under Exhibit A's definition.

6. Tahir Razvi qualifies for Long Term Disability Benefits under Exhibit A, which Guarantee Life and S&B have refused to pay.

7. Tahir Razvi makes this claim under ERISA §502(a)(1)(B) (29 U.S.C. §1132(a)(1)(B).

8. WHEREFORE, Tahir Razvi prays for judgment against Defendants for his Long Term Disability Benefits, his attorney's fees, and prejudgment and postjudgment interest as provided by law.

Respectfully submitted,

/s/ Alden D. Holford

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(713) 988 2377 (fax)
COUNSEL FOR PLAINTIFF

CERTIFICATE OF SERVICE

I certify that on May 2, 2000, before 5:00 p.m., I served the foregoing petition on Defendants by sending a true copy thereof by telephonic document transfer to Linda G. Headley at (713) 659 2147 and to Tynan Buthod at (713) 229 1522

/s/ Alden D. Holford

Alden D. Holford

GUARANTEE LIFE
INSURANCE COMPANY

Omaha, Nebraska
68103-2616
(402) 361- 7300

GROUP LONG TERM DISABILITY CLAIM FORM
BENEFITS MAY BE DELAYED IF CLAIM FORM IS
NOT FULLY COMPLETED
INSTRUCTIONS TO ATTENDING PHYSICIAN

1) Complete Attending Physician's Statement in FULL
2) Send this completed form, along with the Employee's portion of this form, to Guarantee Life insurance Company

ATTENDING PHYSICIAN'S STATEMENT TO BE
COMPLETED BY ATTENDING PHYSICIAN

Name of Patient Tahir Razvi		Date of Birth 6-25-39
1. When did symptoms first appear or accident happen? 06/07/1998	2. Date patient ceased work because of disability? 06/18/1999	3. Has patient ever had the same or similar condition? ☐ Yes ☒ No If 'Yes', state when and describe .
4. Is condition due to injury or sickness arising out of patient's employment? ☐ Yes ☒ No	5. Names and address of other treating physicians (use an additional sheet if necessary) (1) Dr. Camillo Barconas (Nephrologist) (2) Dr. Ali Mortazi (Cardiologist)	

	(3) Dr. Robert Blair (Orthopedist) (4) Dr. Ruben Lemos (Opthomologist)
6. Diagnosis (Including complicatons (1) Chronic Renal Failure (2) Diabetes Melitus (3) Coronary Artery Disease	7. If pregnancy, estimated date of delivery N/A
8. Subjective Symptoms weakness, fatigue, foot pain, Asthma	9. Objective Finding (Includin current x-rays, EKGs, labratory data, findings) (1) Creatinine = 3.6 (2) Coronary angiogram = abnormal
10. Date of first visit 06/30/99	11. Date of last visit June '98
12. Frequency ☐ Weekly ☒ Monthly ☐ Other (specify)	
13. Nature of treatment (Including surgery and medications prescribed, if any) Medications Formation for AV fistula in preparation for dialysis	
14. Has patient ☐ Recovered ☐ Improved ☐ Unchaged ☒ Retrogressed	15. Is patient ☒ Amblatory ☐ Bed Confined ☐ House Confined ☐ Hospital Confined

16. Has patient been hospital confined? ☐ Yes ☒ No
Confined from ____/____/____ to ____/____/____
If Yes, give name and address of hospital

17. Functional capacity
(American Heart Ass'n)

- ☐ Class 1 (No limitation)
- ☐ Class 2 (Slight limitation)
- ☒ Class 3 (Marked limitation)
- ☐ Class 4 (Complete limitation)

Retrogressed

18. Blood Pressure
(last visit)
120/180
systolic/diastolic

19. Physical impairments (*As defined in Federal Dictionary of Occupational Titles)

- ☐ Class 1 -No limitation of functional capacity; capable of heavy work* No restrictions (0-10%)
- ☐ Class 2 - Medium manual activity* (15-30%)
- ☐ Class 3 - Slight limitation of functional capacity; capable of light work* (35-55 %)
- ☐ Class 4 - Moderate limitation of functional of clerical/administrative (sedentary*) activity (60-70%)
- ☒ Class 5 - Severe limitation of functional capacity; incapable of minimum (sedentary*) activity. (75 - 100%)

Remarks

20. Mental Impairments (If applicable)

a. Please define "stress" as it applies to this claimant.
Due to clumic renal failure/heart disease, unable to engage in stress situation

b. What stress and problems in interpersonal relations has claimant had on the job?

☐ Class 1 - Patient is able to function under stress and engage in interpersonal relations (no limitations)

☐ Class 2 - Patient is able to function in most stress situations and engage in most interpersonal relations (slight limitations)

☐ Class 3 - Patient is able to engage in only limited stress situations and engage in only limited interpersonal relations (moderate limitations)

☒ Class 4 - Patient is unable to engage in stress situations or engage in interpersonal relations (marked limitations)

☐ Class 5 - Patient has significant loss ofpsychological, physiological, personal and social adjustment (severe limitations)

Remarks

21. Is patient totally disabled? Patient's job ☒ Yes ☐ No Any other work ☒ Yes ☐ No	22. Date you are medical ly certifying patient unable to work: 6/30/99
23. When do you expect a fundamental or marked change in the future? ☐ 1 Mo. ☐ 3-6 Mo. ☐ 1-3 Mo. ☒ Never	Applies to: ☒ Patient's Job ☒ Other Work
24. Is patient a sitable candidate for occupational rehabilitation?? Patient's job ☐ Yes ☒ No Any other work ☐ Yes ☒ No	25. Can present job be modified t allow for han dling with impairment ☐ Yes ☒ No

26. When could patient return to work?
Date: _____ ☐ Full-time None
Patient's Job ☐ Part-time
Date: _____ ☐ Full-time
Any other work ☐ Part-time

27. Restrictions and Limitations
Very restricted in terms of physical activity & interpersonal relations

Name (Attending Physician) Print — Degree
Fahim Farhat, M. D. — M. D.
Telephone
(713) 442 - 4300

Complete Address
9920 U.S. Hwy 90-A, C - 100
Sugarland, Tx 77478

Signature (By Physician) — Date
/s/ Fahim Farhat — 6/30/99

S&B ENGINEERS and CONSTRUCTORS, LTD.

Payroll Authorization Record

Effective Date 8 - 6 - 99 Date Prepared 6 - 16 - 99

Name Russ Razvi Social Security No.529-50-4583

Address 4815 Hillswick Drive City Sugar Land

State Tx Zip 72479

Date of Birth 6 - 25 - 59 Home Phone (281)565-3734

☒ Male ☐ Single ☒ White ☐ Black ☐ Asian Pacific Islander

☐ Female ☒ Married ☐ Hispanic

☐ American Indian/Alaska Native

Emergency Number _____

Employment or Present Status	Proposed Status
Dept. & Location E 34 Ext. ____	Location ____ Ext. ____
Job Classification E 4	Job Classification _____
Rate: Annual $ ____	Rate: Annual $ ____
Month $ ____	Month $ ____
Hour $____	Hour $____
Exempt (S Code) Yes No	Exempt (S Code) Yes No
☒ Straight Time ☒ Holi Over 40 Hours "W" code days	☐ Straight Time Holi Over 40 Hours "W" code days
☐ 1-1/2 Time ☒ Vacat Over 40 Hours "H" code ion	☐ 1-1/2 Time Vacat Over 40 Hours "H" code ion
☐ All Benefits ☒ Group Insura nce	☐ All Benefits Group Insura nce
☒ No Benefits ☒ 40104 Date _	☐ No Benefits 40104 Date _
☐ Other (If Approved) ☒ Sick Leave	☐ Other (If Approved) Sick Leave
Dept. &	Last Increase___ $___ Date Amount
	Date Employed

For Payroll Purposes:	I understand nothing in this-document is intended to imply that a contract exists between the undersigned and S&B Engineers and Constructors, Ltd. I authorize the company to make any corrections or adjustments to my pay and to deduct any and all payroll, accounts payable, debts or advances from my pay. CONDITIONS OF EMPLOY-MENT UNDERSTOOD: /s/ R. Razvi 6/18/99 Employee Signature Date ☐ New Employee ☐ Direct ☐ Provisional ☐ Re-employment ☐ Merit Increase ☐ Promotion ☐ Change of Classification ☐ Transfer ☐ Payroll location Only Leave of Absence: From: ___/___/____ To ___/___/___

Termination (Voluntary)	Termination (InVoluntary)
☐ Resigned	☒ Reduction of Force
☐ Failure to Report to Work W/O Notification	☐ Unsuited or incapable of performing work
☐ Failure to Return From Leave of Absence	☐ Terminated for Cause
☐ Retirement	☐ Other - explain

Explanation of Termination

_____

_____

_____

_____

Recommended for Rehire

☒ Yes ☐ No

Pay To And Including

_____

(Signed Time Sheet Must Be Submitted To Cover All Pay Status Time)

Has All Company Property Been Returned And All Advances Repaid?

☒ Yes, OK to relase all Checks ☐ No _____

Mail Check and W-2 Form To: _____

_____

Recommended by

/s/ J. Hafer

Approved _____

GUARANTEE LIFE
INSURANCE COMPANY

Omaha, Nebraska
68103-2616
(402) 361- 7300

GROUP LONG TERM DISABILITY CLAIM FORM
BENEFITS MAY BE DELAYED IF CLAIM FORM IS NOT FULLY COMPLETED
INSTRUCTIONS TO EMPLOYEE

1) Do Not Detach This Form

2) Complete Employee's Statement of Claim, Education Background Form, and Authorization to Obtain Information in FULL. The Authorization will allow Guarantee Life Insurance Company or our representative, to secure additional information (if necessary) to make a decision on your request for benefit payments. Attach:

- Copy of your birth certificate (if length of disability is indefinite)
- Copy of Social Security and other income entitlement awards (or forward when received)

3) Give the completed form to the physician treating you (if more than one, obtain other forms for completion from your employer), instruct your attending physician to complete the Attending Physician's Statement and to send it, along with the Employee portion of the form, to Guarantee Life Insurance Company.

4) When this form is received by Guarantee Life, we will advise you of your eligibility for benefits or of anyadditional information that may be needed.

EMPLOYEE'S STATEMENT OF CLAIM
TO BE COMPLETED BY EMPLOYEE

1.Full Name (Last, First, Middle Initial) RAZVI, Tahir S.			2.Social Security Number 329-50-4583
3.Phone Number (281) 565 3734			
4.Street Address & Mailing Address (No P.O. Boxes) 4815 Hillswick Drive			
5.City Sugar Land	6. State Tx.	7. Zip Code 77479	
8. Date of Birth 06/25/39	9. Height 5' - 6"	10. Weight 210	11. Sex ☐ Male ☐ Female
12. Marital Status ☐ Single ☐ Married ☐ Widowed ☐ Divorced			
13. Spouse's Name, Date of Birth, RAZVI, ABIDA T. & Social Security Number 334 - 64 - 3347			
14. Employer's Name HOUSE WIFE		15. Group Policy Number N/A	
16. Occupation (List duties of occupation at the time of disability) SPECIFICATION WRITING FOR EQUIPMENT. BID/ QUOTATION ANALYSIS; COORDINATION WITH OTHER DISCIPLINES			
17. Is Spouse Employed? ☐ Yes ☒ No Spouse s Employer Name and Address N/A			
18. Number of children (under age 25) Names & Dates of Birth of unmarried children who have not finished high school			
SABA S. RAZVI)Both in College D.O.B.01/21/78			
SHEHLA S. RAZVI) D.O.B.07/09/79			
SUE HYRA S. RAZVI Still in High School D.O.B10/14/91			

Complete Reverse Side

19. Date accident occurred or symptoms of illness first noticed.	20. Date you became unable to work due to disability.
21. Date you returned to work full-time	22. Date you returned to work part-time

23. Is your accident or illness related to your occupation?
☐ Yes ☒ No If Yes, explain:
Have you or do you intend to file a Workmen's Compensation Claim? ☐ Yes ☒ No
Name and address of Workmen s Compensation Carrier:

24. Describe how and where accident occurred or describe the onset and nature of your illness.

PROLONGED PROGRESS OF VARIOUS PROBLEMS SUCH AS
(a) HEART (b) ASTHMA (c) STROKE (d) GLACOMA
(e) DIABETES (f) KIDNEY FAILURE

25. Date you were first treated for your illness or injury.

26. Treated by:
Hospital: HERMANN HOSPITAL
Name Street Address
HOUSTON TX
City State Zip
Doctor: DR.SMOLLING/DR.ALI
Name Street Address
HOUSTON TX
City State Zip

27. Have you ever had the same or similar condition in the past?
☐ Yes ☒ No
If "yes," complete No 28

28. Treated by:
Hospital: _____
Name Street Address
_____
City State Zip
Doctor: _____
Name Street Address
_____
City State Zip

29. Describe other income:

Yes	No	Type	Amount	Date began	Date terminated
☐	☐	Social Security (disability or retirement)	$_____	$_____	$_____
☐	☐	State disability	$_____	$_____	$_____
☐	☐	Retirement (normal, early or disability)	$_____	$_____	$_____
☐	☐	Workmen's Compensation	$_____	$_____	$_____
☐	☐	Group disability benefits	$_____	$_____	$_____
☐	☐	Other (describe)	$_____	$_____	$_____

30. Have you applied, or do you plan to apply for benefit(s) described in #29?

Type _____ Date application filed _____

Type _____ Date application filed _____

If your request for benefits is approved, do you want us to withhold amount from each check for Federal Income Tax purposes?

If yes, Amount $ _____

(Indicate amount per week $20.00 min.)

Signature /s/ S. Razvi 07/01/99

The above statements are true and complete to the best of my knowledge and belief

_____ _____

Signature of Employee Date

WARNING: Any person who knowingly, and with intent to defraud or deceive any insurance company, files an application or claim containing any false, incomplete, or misleading information is guilty of a felony.

BENEFIT SEMINARS PLUS

August 6, 1999

T.S. RAZVI
4815 HILLSWICK DR.
SUGARLAND, TX 77479

Re: NOTICE OF COBRA ELIGIBILITY
THIS IS THE ONLY NOTIFICATION
YOU WILL RECEIVE

Dear COBRA Qualified Beneficiary:

Because of termination of employment, your health benefits ended on 8/6/99. Your COBRA coverage will become effective if you choose to continue insurance coverage on 8/7/99, the first day after your coverage for the regular group health benefits ended due to loss of coverage. The Employee and his or her dependents who had medical and dental coverage under the S&B ENGINEERS and CONSTRUCTORS, LTD. Medical and Dental Plan hereafter referred to as "qualified beneficiaries" or "you" are eligible to continue this coverage temporarily beyond the date benefits would normally end. Each qualified beneficiary may separately choose to continue the eligible coverage which he or she currently carries. Unless you specify otherwise, a choice by one qualified beneficiary will be considered to be a choice made by all qualified beneficiaries.

You may continue your eligible COBRA coverage up to 18 months if your coverage ended due to termination of employment, reduction in hours worked or loss of coverage. However, if you are determined under the Social Security Act to have been totally disabled at any time during the first 60 days of continuation of coverage, you may continue your coverage for an

additional 11 months at an increased cost for this additional period, provided you remain so disabled. To be eligible for this additional period, you must notify us of such determination of total disability before the end of the initial 18-month period.In addition, the employee's dependents who are qualified beneficiaries are eligible to continue coverage for up to 36 months upon the occurrence of the following events:

(1) The employee's death;

(2) Divorce or legal separation from the employee;

(3) The employee's entitlement to benefits under Medicare; and

(4) A dependant child ceasing to be a dependant child as defined in the Plan.

4118 Avondale Ave., Dallas, TX 75219 (214) 520-9605
(214) 522-8060 fax

Coverage cannot continue beyond:

(a) Thirty-six months, even if more than one qualifying event occurs.
(b) The date the employer no longer maintains any group health plan for any employee.
(c) The date you become covered under any other health plan (as an employee or otherwise) which does not contain any exclusion or limitation with respect to any of your pe-existing conditions.
(d) The date you become entitled to benefits under Medicare.
(e) The date you fail to timely pay the required premiums for this continued coverage.

The coverage will be the same as provided S&B employeesand dependents. That is, if the employer changes coverage for active employees, your coverage must change accordingly.

A child who is born or placed for adoption with the covered employee during the continuation period is a qualified beneficiary, and can be covered upon your request with written notification to the Plan Administrator of the birth or adoption, and payment of any required premium, and completion of necessary forms.

Should you choose to continue medical and/or dental coverages the total premium due are shown on the enclosed Schedule of Rates. The total premium due should be paid at the time you send in the Enrollment Form, however you are allowed to delay the premium payment for up to 45 days from election date after you have submitted your election form. This 45 day grace period is for your <u>first payment only</u>. Your payment must be postmarked prior to the 45th day. Any claims submitted for expenses incurred following the date of the Qualifying Event may be held in suspense until all premiums have been paid.

The monthly cost to continue your current coverage is as follows:

	Coverage Type	COBRA Rates
Medical	HMO Fam	$619.57
Dental	COMPDENT	$8.76

If you would like to continue receiving these benefits, please complete the enclosed election form and return them to the address stated on the form. Your election form must be post-marked within 60 days from the date of this letter. If you do not mail this election form within 60 days, you will lose your rights to continued coverage. You will not be allowed to choose continued coverage at a later time.

You may also use the enclosed election form to waive continued coverage by checking the appropriate space and signing and dating the form where indicated, and returning it to the above address.

You may continue some or all of the coverages you currently have. Checks for premiums due are to be made out the S&B ENGINEERS andCONSTRUCTORS, LTD. The premium for coverage to the end of the month in which you send your election form is due along with the enrollment form. Thereafter, the premium are payable in advance the first of each month. Checks must be postmarked by the last day of the month. Failure to pay premiums by the due date will terminate your insurance coverage. NO EXCEPTIONS! You will NOT receive monthly statements.

PLEASE ALLOW SEVEN (7) BUSINESS DAYS FOR REACTIVATION OF YOUR BENEFITS. SCHEDULEYOUR APPOINTMENTS AND PRESCRIPTION REFILLS ACCORDINGLY.

Sincerely,
/s/ LISA
Lisa Mizell

CONTINUATION OF COVERAGE ELECTION FORM FOR
S&B ENGINEERS AND CONSTRUCTORS, LTD.
MEDICAL AND DENTAL COVERAGE

___ I do not elect to continue any benefits.
_√_ I elect to continue group medical coverage by paying the premium required.
_√_ I elect to continue group dental coverage by paying the premium required.

Please continue coverage for:

LIST FULL NAME OF PARTICIPANTS TO BE COVERED	SOC. SEC. NO.	DATE OF BIRTH MO. DAY YR.	RELATION	MED.	DENT Cancer
TAHIR S. RAZVI	329 504 583	06 25 39	G EMPL.	√	√ √
ABIDA S. RAZVI	334 643 347	01 05 45	G SPOUSE	√	√
SABA S. RAZVI	467 859 017	01 21 78	G CHILD	√	√
SHEHLA S. RAZVI	453 876 266	08 09 79	G CHILD	√	√
SUEMYRA S. RAZVI	467 858 870	10 14 81	G CHILD	√	√
_____	___	_____	G CHILD		_____

Please mail completed election forms and all payments to: (Remember checks need to be made out to "S&B Engineers and Constructors, Ltd.".

Lisa Mizell
Benefit Seminars Plus
4118 Avondale Ave.
Dallas, TX 75219

Note: Payments are made on an after-tax basis. Participant must advise the employer, in writing, in the event you or a dependent become covered under another group plan or become eligible for Medicare or no longer wish to continue medical coverage.

I certify that no individual listed is covered without pre-existing condition limitations under any other group medical benefit plan at this time, including. Medicare. I understand that I must pay the required premium to the employer on or before the first day of each month, or my coverage will end.

/s/ S. Razvi
Signature of person making election

/s/ Adida Razvi (SPOUSE)
Signature of person making election

08/13/1999
Date

*Please keep a copy of this form for your records.

Exit Interview

Employee Russ Razvi Department Mechanical

Last day worked 06/18/99 Classification _____

Please read statements one and two and indicate by signature if you want to participate in this survey.

1. I prefer not to comment on the questions on this form _____ Signature

2. I understand that my comments to the questions on this form will be used by S&B management for the purpose of improving employment conditions whenever possible. /s/ S. Razvi Signature

Questions	Excellent	Good	Fair	Poor	Interviewee's Comments
How were our working conditions?			√		
How well are task and employees matched?			√		
How well was work organized?			√		
What did you feel your growth potential was?			√		

What did you feel your opportunity was to participate, make suggestions, be involved in your work?	√
How well did you receive recognition or credit for your contributions?	√
How did management treat you??	√

3. My major reason for leaving is
INVOLUNTARY LACK OF WORK

4. Can you make any suggestions as to how the company could be a better place in which to work?

_____

Remarks:

_____

_____

Date 06/18/99 Representative ofEmployee_____

_____

Interviewer's Comments_____

_____